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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matters of)

Rulemaking to Amend Part 1 and Part 21)
of the Commission's Rules to Redesignate)
the 27.5 - 29.5 GHz Frequency Band and to)
Establish Rules and Policies for Local)
Multipoint Distribution Service;)

CC Docket No. 92-297

RM-7872; RM-7722

Applications for Waiver of the)
Commission's Common Carrier Point-to-)
Point Microwave Radio Service Rules;)

Suite 12 Group Petition for Pioneer's)
Preference;)

PP-22

University of Texas - Pan American)
Petition for Reconsideration of)
Pioneer's Preference Request Denial)

To: The Commission

COMMENTS OF THE UTILITIES TELECOMMUNICATIONS COUNCIL

The Utilities Telecommunications Council (UTC) hereby submits its comments in response to the Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration (NPRM), FCC 92-538, released January 8, 1993, by the Federal Communications Commission (FCC). The NPRM proposes rules and seeks information regarding the redesignation of the 27.5 GHz to 29.5 GHz frequency range (28 GHz band) from point-to-point common carrier microwave service to Local Multipoint Distribution Service (LMDS).

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UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities. Approximately 2,000 utilities are members of UTC, ranging in size from large combination electric-gas-water utilities which serve millions of customers, to smaller, rural electric cooperatives and water districts which serve only a few thousand customers each. All utilities depend upon reliable and secure communications to assist them in carrying out their obligations to provide service to the public. Utilities are therefore interested in regulation of LMDS and its possible applications for utility voice and data functions, such as demand-side management, internal communications and distribution automation. UTC respectfully submits its comments on the NPRM below.

UTC supports the Commission's proposal to redesignate the 28 GHz band for LMDS service. Redesignation of the 28 GHz band is consistent with the Commission's stated goal of promoting the efficient use of the spectrum. Under its current allocation to the point-to-point microwave service, the 28 GHz band is virtually unused. LMDS service offers the opportunity for a great number of applications and will undoubtedly increase the number of users in this band. Additionally, the lack of current 28 GHz band licensees means that this efficiency can be obtained without disrupting large numbers of existing users.

UTC applauds the FCC's proposal to promulgate rules "which reflect the maximum flexibility for licensees to construct communications systems in which the public is interested." NPRM at 7. In particular, UTC supports the Commission's proposals to: (1) permit licensees to elect whether to operate as a common or non-common carrier on a cell-by-cell and/or channel-by-channel basis; and (2) not restrict LMDS services to video services only. NPRM at 10, 6. Such restrictions are unnecessary and could limit the growth and evolution of LMDS service. Further, because the possible applications of the service are unknown, regulatory constraints on the types of service or on potential operators are inappropriate.

To further provide flexibility, UTC urges the Commission to adopt a less stringent minimum service requirement. The Commission proposes to require a LMDS licensee to be able to provide service to 90% of the population of its service territory within three (3) years of a grant of a license. NPRM at 13. This requirement is too stringent and may unnecessarily restrict the development of LMDS. Although there is a need to prevent spectrum warehousing and to promote efficient spectrum use, these goals can be attained with more flexible minimum service restrictions. UTC recommends that the Commission adopt a rule requiring that a LMDS service provider must be capable of

providing service to 75% of either the service area or population. Such a requirement would ensure that LMDS systems serve substantial portions of the population while not overburdening LMDS providers.

A 75% area or population coverage requirement is also more consistent with the Commission's existing rules regarding cellular service. Section 22.903 provides that cellular providers must be capable of providing service to 75% of their total Cellular Geographic Service Area (CGSA). This section further provides that most CGSAs must encompass only 75% of the total population or territory of the relevant service areas - the Metropolitan Statistical Areas (MSAs).^{1/} LMDS providers should be given at least as much flexibility as cellular providers. Thus, the Commission should require minimum service to no more than 75% of the LMDS service territory or population.

UTC disagrees with the Commission's proposal to license LMDS in two 1000 MHz blocks. Such an allocation would unnecessarily limit the number of potential LMDS license holders and would, thereby, jeopardize the growth of this emerging technology. As the Commission notes, LMDS technology "offers the promise for a

^{1/} Thus, most cellular licensees must provide service only to 56.25% (75% of 75%) of the total MSA service area.

wide variety of applications that could be tailored to local interests." NPRM at 7. UTC recommends licensing of four (4) LMDS systems, each with 500 MHz bandwidth in each service territory. This would provide for more diversity in LMDS license holders and, in conjunction with a larger service area as explained below, would allow for more efficient use of the spectrum. Assigning 500 MHz of bandwidth to each licensee would permit the development of competitive video distribution services and offer more opportunities for the development of innovative communications services.

UTC disagrees with the Commission's proposal establish Basic Trading Areas (BTAs) as LMDS service areas. According to the Commission, BTA service areas are desirable for LMDS because they: (1) are discrete and identifiable areas that would facilitate the processing of applications; (2) provide competition in the provision of LMDS services while benefitting from some economies of scale; and (3) reinforce consumers' communities of interest. NPRM at 12-13.

These three goals will be better served by establishing local access and transport areas (LATAs) as LMDS service areas. First, there can be no doubt that LATAs are as administratively convenient for application processing purposes as BTAs. Second,

LATA service areas more closely match consumers' perceptions of their communities of interest. Advances in telecommunications and transportation have led to a regional view of communities. Consumers no longer view their communities of interest as a pertaining to a single city or town but rather to an entire region. Evidence of this growing regionalism can be found in state public service commissions which are receiving a growing number of requests to increase the local service areas of local telephone service to more closely suit consumers' evolving communities of interest.

LATA service territories would also better permit the use of economies of scale in the provision of LMDS service. As the Commission points out, "... the cellular industry might have benefitted from larger initial licensing areas, since many licensees have expended large sums to combine metropolitan area and rural area licensed into combined systems." NPRM at 13. The Commission should take advantage of its experience with cellular licensing to ensure that LMDS providers are not constrained by service areas which are too small.

UTC supports the use of a lottery to assign licenses for LMDS. UTC is strongly opposed to the use of competitive bidding in assigning spectrum. Competitive bidding is highly prejudicial


to small entities without vast resources and also to regulated companies and companies that must use spectrum as a business "tool", such as utilities. As a result, the Commission's goal of attaining diversity in the allocation of spectrum will be hindered.

WHEREFORE, THE PREMISES CONSIDERED, UTC requests the Federal Communications Commission to take action in accordance with the views expressed in these comments.

Respectfully submitted,

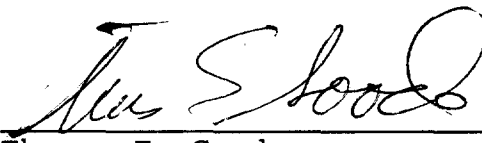
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